

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN EARL CAMPBELL,  
Plaintiff,

v.

NATIONAL PASSENGER RAILROAD  
CORPORATION, et al.,  
Defendants.

No. C 05-5434 CW

ORDER AWARDING  
DEFENDANT JOE  
DEELY \$4,101.73 IN  
COSTS  
(Docket No. 319)

Plaintiff John Earl Campbell has filed a motion to tax costs, challenging the Clerk's award of costs to Defendant Joe Deely. (Docket No. 319). Deely opposes the motion in part. The motion was taken under submission on the papers. Having considered the papers submitted by the parties, the Court GRANTS Plaintiff's motion in part and DENIES it in part and awards Deely \$4,101.73 in costs.

BACKGROUND

In this racial discrimination action, Plaintiff filed several claims against Deely for alleged violations of state and federal law. The Honorable Martin J. Jenkins, to whom this case was previously assigned, granted summary judgment in favor of Deely on all claims against him.

1 As a prevailing party, Deely filed a Bill of Costs for  
2 \$22,585.37, claiming that he spent \$8,013.54 on deposition  
3 transcripts and \$14,571.83 on copies. The Clerk taxed \$22,563.37  
4 in costs for Deely, after striking a twenty-two dollar parking fee  
5 as not allowable under Civil Local Rule 54-3(c).

6 LEGAL STANDARD

7 Federal Rule of Civil Procedure 54(d)(1) authorizes the Court  
8 to grant the prevailing party its costs. The determination of  
9 taxable costs is governed by 28 U.S.C. § 1920 and, more  
10 particularly, Civil L.R. 54-3, which specifically enumerates the  
11 standards for costs recoverable in this District. This Court may  
12 only tax costs explicitly authorized by § 1920. See Alflex Corp.  
13 v. Underwriters Labs., Inc., 914 F.2d 175, 177-78 (9th Cir. 1990);  
14 see also Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437,  
15 442 (1987). Section 1920 permits the taxing of costs for various  
16 items, such as deposition transcripts and copying of papers, if  
17 they are "necessarily obtained for use in the case." 28 U.S.C.  
18 § 1920.

19 DISCUSSION

20 As an initial matter, Deely argues that Plaintiff's motion  
21 should be denied because Plaintiff's counsel failed to meet and  
22 confer concerning the objections. A party objecting to a bill of  
23 costs is required to file objections within fourteen days of being  
24 served and must, in good faith, meet and confer or attempt to meet  
25 and confer with opposing counsel regarding the objections. Civil  
26 L.R. 54-2. Having reviewed the parties' papers, the Court excuses  
27 Plaintiff's counsel's failure to abide by this requirement.  
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1 However, in the future, Plaintiff's counsel must fully comply with  
2 the Civil Local Rules.

3 I. Deposition Transcripts

4 Plaintiff asserts that the Clerk's award of \$7,991.54 for  
5 deposition transcripts should be reduced by fifty percent because  
6 National Railroad Passenger Corporation (Amtrak), Deely's co-  
7 defendant, also used the transcripts to defend against Plaintiff's  
8 claims. Plaintiff argues that allowing Deely to recover all of  
9 these costs would allow him to recover costs on behalf of Amtrak,  
10 a losing party. Deely did not respond to this argument.

11 The Court presumes that Amtrak also relied on the deposition  
12 transcripts when it defended against Plaintiff's claims and finds  
13 it reasonable to require Amtrak to bear one-half of the  
14 transcripts' costs. Allowing Deely to recover the full cost of  
15 transcripts would reimburse him for an amount greater than his  
16 share and provide him with an unwarranted windfall. The Court  
17 therefore reduces the Clerk's award for the cost of deposition  
18 transcripts to \$3,995.77 to reflect Deely's one-half share of the  
19 total.

20 II. Copying Charges

21 Under 28 U.S.C. § 1920, a court may tax "the costs of making  
22 copies of any materials where the copies are necessarily obtained  
23 for use in the case." Civil Local Rule 54-3(d) clarifies what are  
24 "necessarily obtained" copies. For example, the "cost of  
25 reproducing disclosure of formal discovery documents when used for  
26 any purpose in the case is allowable." Civil L.R. 54-3(d)(2).  
27 However, the "cost of reproducing copies of motions, pleadings,  
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1 notice, and other routine case papers is not allowable." Civil  
2 L.R. 54-3(d)(3).

3 The Clerk taxed \$14,571.83 in copying costs. Plaintiff  
4 asserts that Deely should not recover any copying costs because  
5 these were "in-house photocopies made for the convenience of  
6 counsel." Reply at 2. Under this District's Civil Local Rules,  
7 this is incorrect; as noted above, the costs to reproduce formal  
8 discovery documents when used for any purpose may be taxed.  
9 However, the record is not clear on the purpose for many of the  
10 copies Deely seeks to tax. Although Deely provides over thirty  
11 pages of print and copy logs to support his Bill of Costs, a  
12 majority of the copies have no description as to their purpose.<sup>1</sup>  
13 Only seven transactions, totaling 883 pages and charged at \$0.20  
14 per page, are described as relating to discovery.<sup>2</sup> See Letter  
15 from Dylan Carp (Nov. 16, 2009), Ex. B. at 3-4, 14 (Docket No.  
16 315).

17 Accordingly, Deely shall recover copying costs for only these  
18 seven discovery-related transactions. The Court disallows the  
19 costs of copies that lack explanation, because it cannot determine  
20 whether these copies are taxable, and copies made for a non-  
21 taxable purpose. The Court also reduces the \$0.20 per page rate  
22 sought by Deely to \$0.12 per page. The Court therefore awards  
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24 <sup>1</sup> The copy logs show that Deely's counsel could have entered  
25 information in a description field to explain whether the copy was  
made for a taxable purpose. In the majority of the instances,  
counsel failed to do so.

26 <sup>2</sup> Other transactions also provide cognizable descriptions.  
27 See, e.g., Letter from Dylan Carp (Nov. 16, 2009), Ex. B. at 1  
28 (Docket No. 315). However, these descriptions do not suggest that  
the copies were made for a taxable purpose.

1 Deely \$105.96 for the cost of duplicating 883 pages at \$0.12 per  
2 page.

3 CONCLUSION

4 For the foregoing reasons, the Court GRANTS Plaintiff's  
5 motion in part and DENIES it in part. The Court taxes \$4,101.73  
6 in costs: \$3,995.77 for deposition transcript costs and \$105.96  
7 for copying costs. Plaintiff shall remit this amount to Deely  
8 within fourteen days of the date of this order.

9 IT IS SO ORDERED.

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11 Dated: February 18, 2010



12 CLAUDIA WILKEN  
13 United States District Judge  
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